

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**JOHNNY THOMAS,**

**Plaintiff,**

**vs.**

**HY-VEE, INC.,**

**Defendant.**

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**8:06CV511**

**ORDER**

This matter is before the court on defendant's Motion to Compel [18] and Amended Motion to Compel [25]. Moving counsel has complied with NECivR 7.1(i).

The record shows that plaintiff did not timely respond to defendant's discovery requests. After defendant filed the pending discovery motions, plaintiff filed a Notice [26] that responses were served on January 30, 2007. During the parties' February 12, 2007 planning conference, defense counsel advised that discovery responses were received.

Upon consideration of the matter, I find that defendant's motion should be denied as moot, without prejudice to defendant contesting the adequacy of plaintiff's discovery responses. I further find that the circumstances of this incident would make an award of expenses unjust and decline to assess costs or fees against the plaintiff at this time. *See* Fed. R. Civ. P. 37(a)(4)(B). Future episodes of this nature, however, may well result in the imposition of sanctions pursuant to Rule 37.

**IT IS ORDERED** that defendant's Motion to Compel [18] and Amended Motion to Compel [25] are denied as moot, without prejudice to defendant contesting the adequacy of plaintiff's responses within a reasonable time.

**DATED February 12, 2007.**

**BY THE COURT:**

**s/ F.A. Gossett  
United States Magistrate Judge**